

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

JUAN BACA,

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant

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CAUSE NO.: EP-20-CV-102

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, JUAN BACA, in the above-entitled and numbered cause, complaining of and about Defendant UNITED STATES OF AMERICA (hereinafter as necessary "Defendant United States"). Plaintiff, in support thereof, would show as follows:

PARTIES

1. Plaintiff, JUAN BACA, is an individual who resides in El Paso, Texas and is a citizen of the State of Texas.
2. Defendant, UNITED STATES OF AMERICA, is a governmental entity which may be served with process by serving Mr. William Barr, Attorney General of the United States, United States Department of Justice, by and through the Assistant Attorney General for Administration, Justice Management Division, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, by certified mail, return receipt requested, pursuant to Section 4-2.300, U.S. Attorney's Manual and Mr. John F. Bash, United States Attorney, Western District of Texas, by and through Stephanie Rico, Civil Process Clerk, Office of the United States Attorney for the Western District of Texas, 601 Northwest Loop 410, Suite 600, San Antonio, Texas 78216-5597, by certified mail, return receipt requested, pursuant to Amended Designation of Agents for Service of Process.

JURISDICTION

3. Suit is brought for money damages for personal injury and damage to property caused by the negligent or wrongful act or omission of an employee of the United States of America while acting within the scope of his office or employment and this Court has jurisdiction over this cause of action pursuant to the Federal Torts Claims Act, 28 U.S.C. §§1346(b), 2671 et seq.

VENUE

4. A substantial part of the events or omissions giving rise to the claim occurred in this District and venue is proper in this District pursuant to 28 U.S.C. §1391(e)(1).
5. The Customs and Border Protection (hereinafter "CBP"), at all relevant times herein, was a "federal agency" within the meaning of 28 U.S.C. §2671.

BACKGROUND AND FACTS

6. Plaintiff's Standard Form 95 claim was filed/submitted on or about April 4, 2019 requesting bodily injury and property damages in the amount of One Million, One Hundred Thousand dollars (\$1,100,000) pursuant to 28 U.S.C. §2675(a), concerning the injuries and damages which were tortiously caused to Plaintiff on or about March 22, 2019.
7. The government denied Plaintiff's administrative claim on March 23, 2020. See letter dated March 23, 2020 from Pamela A. Miller, Director National Finance Center attached as Exhibit "A" and email dated March 24, 2020 from Mark W. Hannig, Attorney, U.S Customs and Border Protection attached as Exhibit "B".
8. The instant suit is duly commenced no later than six months after the denial of Plaintiff's claim. See 28 U.S.C. §2675(a) and 28 U.S.C. §2401.
9. Plaintiff, on or about March 23, 2020, was operating his motor vehicle westbound at 700 E. Paisano, in the turning lane to turn southbound to 400 S. Florence.
10. At approximately the same time, Wryan Eugene Young, in the course and scope of his employment Defendant United States, was also operating his motor vehicle on E. Paisano.
11. Mr. Young, traveling eastbound on E. Paisano, failed to control his speed and struck Plaintiff's motor

vehicle.

12. The collision was investigated by an officer from the El Paso Police Department and Mr. Young was determined to at fault. Mr. Young was issued a citation for "Failure to Control Speed and Causing an Accident. See Texas Peace Officer's Crash Report, attached hereto as Exhibit "C".
13. Plaintiff, as a result, sustained injuries and damages as set out in this complaint below.

NEGLIGENCE OF DEFENDANT'S EMPLOYEE
WRYAN EUGENE YOUNG

14. Plaintiff alleges that the collision and resulting damages and injuries to him were proximately caused by one or more of the following alternative theories of negligence on the part of Wryan Eugen Young in:

- A. Failing to keep such a proper outlook as a person of ordinary care would have kept;
- B. Failing to drive as a person of ordinary care would have done;
- C. Driving at an excessive rate of speed as a person of ordinary care would not have done;
- D. Failing to control his speed as a person of ordinary care would have done;
- E. Failing to turn his motor vehicle to avoid the collision as a person using ordinary care would have done;
- F. Failing to take proper evasive action as a person of ordinary care would have done;
- G. Failing to yield right of way to avoid the collision as a person using ordinary care would have done;
- H. Failing to make timely or proper application of the brakes on his motor vehicle as a person using ordinary care would have done;
- I. Failing to turn his vehicle to the left or to the right to avoid the collision as a person of ordinary care would have done;

15. Wryan Eugene Young, an employee of Defendant United States at the aforesaid time and place, was an agent, servant, or employee of the CBP, was an "employee of the government" within the meaning of 28 U.S.C. §2671, was operating a motor vehicle owned by Defendant United States through its agency, the CBP, with the express permission or consent of Defendant United States and, as the agent, servant, and employee of Defendant United States, was acting within the course and scope of his employment

with Defendant United States and CBP.

16. All negligence of the employee of Defendant United States, while operating a motor vehicle owned by United States of America and while acting within the course and scope of this employment with Defendant United States and the CBP, pursuant to 28 U.S.C. §1346(b), is imputed to Defendant United States.

NEGLIGENCE OF DEFENDANT UNITED STATES OF AMERICA

17. Defendant United States owned the vehicle negligently operated by Wyran Eugene Young. Defendant United States negligently entrusted the vehicle to a driver that was negligent and reckless. As a result of Defendant United States negligently entrusting the vehicle to Wyran Eugene Young, Plaintiff was harmed as specified above.

DAMAGES TO PLAINTIFF

18. Plaintiff, as a proximate and producing result of the collision and the above acts or omissions of Wyran Eugene Young, an employee of Defendant United States, has sustained injuries to his head, neck, thoracic spine, lumbar spine, left shoulder, and left leg, and other parts of his body in general. He has endured extensive medical treatment in an effort to alleviate his pain.
19. Plaintiff, as a direct and proximate result of the collision and the above acts or omissions of Defendant's employee, incurred the following damages:
 - A. Reasonable and necessary medical expenses incurred in the past;
 - B. Reasonable and necessary medical expenses which, in all reasonable probability, will be incurred in the future;
 - C. Physical pain sustained in the past;
 - D. Disfigurement;
 - E. Physical pain which, in all reasonable probability, will be sustained in the future;
 - F. Mental anguish sustained in the past;
 - G. Mental anguish which, in all reasonable probability, will be sustained in the future;
 - H. Physical impairment sustained in the past;

- I. Physical impairment which, in all reasonable probability, will be sustained in the future; and,
 - J. Property damage to his vehicle that was involved in the instant collision.
20. Plaintiff is also entitled to pre-judgment and post-judgment interest at the maximum rate allowed by law.
21. Plaintiff, because of all of the above and foregoing, has been damaged and will be damaged in amounts deemed to be just and fair by the Court which are personal injuries in the amount of One Million dollars (\$1,000,00.00); property damages in the amount of One Hundred Thousand dollars(\$100,000.00); and, damages for loss of use of his vehicle at the rate of Twenty-Five dollars and zero cents (\$25.00) per day, which are amounts within the jurisdictional limits of this Court for which Plaintiff now brings suit.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, JUAN BACA, respectfully demands judgment of and against Defendant UNITED STATES OF AMERICA for bodily injury damages in the amount of One Million dollars (\$1,000,000); property damages in the amount of One Hundred Thousand dollars(\$100,000); and, damages for loss of use of his vehicle at the rate of Twenty-Five dollars (\$25.00) per day,; pre-judgment and post-judgment interest at the maximum rate allowed by law; court costs; and, and any other relief, at law or in equity, general or special, to which Plaintiff may be justly entitled.

Respectfully submitted,

LAW FIRM OF DANIELA LABINOTI, P.C.

Attorneys for Plaintiff

707 Myrtle Avenue

El Paso, Texas 79901

(915) 581-4600

(915) 581-4605 (Facsimile)

Daniela@labinotilaw.com

/s/ Daniela Labinoti

DANIELA LABINOTI

Texas State Bar No. 24050900

Exhibit “A”



**U.S. Customs and
Border Protection**

Daniela Labinoti
Law Firm of Daniela Labinoti
707 Myrtle
El Paso, Texas 79901

RE: Administrative Claim under the Federal Tort Claims Act
Claimant: Juan Baca

Dear Ms. Labinoti:

On February 25, 2020 the Agency received Mr. Baca's claim for compensation due to personal injuries and property damage. The claim arises out of a two-vehicle accident that occurred on March 22, 2019 at the intersection of Florence and Paisano. Mr. Baca claims his personal injury and property damages amount to \$120,000.

The Federal Tort Claims Act, beginning at 28 USC §2671, grants to the head of each Federal Government agency the authority to consider and settle administratively claims for injuries caused by a negligent or wrongful act or omission of an employee of the Federal government while acting within the scope of employment. As Agency authority, I fully considered all the facts and circumstances of your client's claim. Based on the evidence presented, I determined that Mr. Baca's claim is not allowed because it cannot be attributed to a negligent or wrongful act or omission of a U.S. Customs and Border Protection employee while the employee was acting within the scope of employment.

Under governing regulations, if you are dissatisfied with this decision, you may file suit in an appropriate United States District Court not later than six months after the date of this letter.

Sincerely,

**PAMELA A
MILLER** Digitally signed by
PAMELA A MILLER
Date: 2020.03.23
17:23:09 -04'00'

Pamela A. Miller
Director, National Finance Center

Exhibit “B”



Suetta Carder <suetta@labinotilaw.com>

RE: Claim of Juan Baca

1 message

HANNIG (OCC), MARK W <MARK.W.HANNIG@cbp.dhs.gov>

Tue, Mar 24, 2020 at 2:18 PM

To: Daniela Labinoti <daniela@labinotilaw.com>, Suetta Carder <Suetta@labinotilaw.com>

Cc: Lily Chavez <lily@labinotilaw.com>

Yes, use the date of email.

Respectfully,

Mark W. Hannig

Attorney

U.S. Customs and Border Protection

Assistant Chief Counsel's Office

9434 Viscount Blvd, Suite 200

El Paso, Texas 79925

915 599-0800

From: Daniela Labinoti <daniela@labinotilaw.com>**Sent:** Tuesday, March 24, 2020 2:16 PM**To:** HANNIG (OCC), MARK W <MARK.W.HANNIG@CBP.DHS.gov>; Suetta Carder <Suetta@labinotilaw.com>**Cc:** Lily Chavez <lily@labinotilaw.com>**Subject:** Re: Claim of Juan Baca

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact the CBP Security Operations Center with questions or concerns.

Mark,

Thanks,

We will file suit but the letter is NOT dated. Can I use your email as the date of the letter?

SOL is 6 months from the date of the letter.

Sincerely,

Law Firm of Daniela Labinoti, P.C.

Personal Injury & Employment Law

Texas and New Mexico

707 Myrtle

El Paso, Texas 79901

Phone: 915-581-4600

Fax #: 915-581-4605

daniela@labinotilaw.com

www.linkedin.com/in/labinotilaw

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On Tue, Mar 24, 2020 at 10:21 AM HANNIG (OCC), MARK W <MARK.W.HANNIG@cbp.dhs.gov> wrote:

Daniela:

Here is the Government's response to Mr. Baca's claim. We'll snail mail a hardcopy too.

Respectfully,

Mark W. Hannig

Attorney

U.S. Customs and Border Protection

Assistant Chief Counsel's Office

4/13/2020

Labinfo@law.com Mail - RE: Claim of Juan Baca

9434 Viscount Blvd, Suite 200

El Paso, Texas 79925

915 599-0800

Exhibit “C”

Law Enforcement and TxDOT Use ONLY

☐ FATAL ☐ CMV ☐ SCHOOL BUS ☐ RAILROADAB ☐ SUPPLEMENT ☐ ACTIVE SCHOOL ZONE

Total Num. Units 2 Total Num. Trans. 2 TxDOT Crash ID 16969645.1 /2019129293

Texas Peace Officer's Crash Report (Form CR-3 1/1/2018)

Mail to: Texas Department of Transportation, Crash Data and Analysis, P.O. Box 149349, Austin, TX 78714. Questions? Call 844/274-7457

Refer to Attached Code Sheet for Numbered Fields

*These fields are required on all additional sheets submitted for this crash (ex.: additional vehicles, occupants, injured, etc.).

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IDENTIFICATION & LOCATION

VEHICLE, DRIVER, & PERSONS

VEHICLE, DRIVER, & PERSONS

VEHICLE, DRIVER, & PERSONS

Crash Date (MM/DD/YYYY) 03/22/2019		Crash Time (24HRMM) 12:12:5		Case ID 19-081203		Local Use	
County Name EL PASO				City Name EL PASO			
In your opinion, did this crash result in at least \$1,000 damage to any one person's property?				Latitude (decimal degrees)		Longitude (decimal degrees)	
ROAD ON WHICH CRASH OCCURRED							
1 Rdwy. Sys. US		2 Rdwy. Part 1		3 Street Prefix E		4 Street Suffix DR	
Crash Occurred on a Private Drive or Road/Private Property/Parking Lot		Toll Road/Toll Lane		Speed Limit		Street Desc. PUBLIC ROADWAY	
INTERSECTING ROAD, OR IF CRASH NOT AT INTERSECTION, NEAREST INTERSECTING ROAD OR REFERENCE MARKER							
At Int. Yes		1 Rdwy. Sys. LR		2 Rdwy. Part 1		3 Street Prefix S	
Distance from Int. or Ref. Marker		Reference Marker		Street Desc. PUBLIC ROADWAY		RRR Num.	
Unit Num. 1		5 Unit Desc. 1		LP State 98		LP Num. 269255	
Veh. Year 2012		6 Veh. Color WHI		Veh. Make CHEVROLET		Veh. Model TAHOE	
8 DL/ID Type 1		DL/ID State TX		DL/ID Num. 34478750		9 DL Class C	
Address (Street, City, State, Zip) 14669 GINGER KERRICK EL PASO, TX 79938		10 CDL End. 96		11 DL Rest. 96		DOB (MM/DD/YYYY) 10/21/1985	
Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line							
Person Num. 1		12 Pish. Type 1		13 Seat Position 1		14 Injury Severity C	
15 Age 33		16 Sex W		17 Eject 1		18 Restr. 1	
19 Airbag 2		20 Helmet 97		21 Sol. N		22 Alc. Spec. 96	
23 Drug Spec. 96		24 Drug Result 97		25 Drug Category 97		Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.	
Owner/Lessee Name & Address CBP US BORDER PATROL, CBP US BORDER PATROL							
Proof of Fin. Resp. Yes		26 Fin. Resp. Type 7		Fin. Resp. Name CHIEF COUNSEL		Fin. Resp. Num. SELF INSURED	
Fin. Resp. Phone Num. (915) 599-0149		27 Vehicle Damage Rating 1		27 Vehicle Damage Rating 2		Vehicle Inventoried Yes	
Towed By PRIVATE TOW BY BORDER PATROL		Towed To PRIVATE TOW BY BORDER PATROL					
Unit Num. 2		5 Unit Desc. 1		LP State TX		LP Num. HLN8502	
Veh. Year 2007		6 Veh. Color WHI		Veh. Make FORD		Veh. Model RANGER	
8 DL/ID Type 1		DL/ID State TX		DL/ID Num. 34241758		9 DL Class C	
Address (Street, City, State, Zip) 6237 MICHEL ST EL PASO, TX 79932		10 CDL End. 96		11 DL Rest. 96		DOB (MM/DD/YYYY) 12/13/1953	
Name: Last, First, Middle Enter Driver or Primary Person for this Unit on first line							
Person Num. 1		12 Pish. Type 1		13 Seat Position 1		14 Injury Severity C	
15 Age 65		16 Sex W		17 Eject 1		18 Restr. 1	
19 Airbag 1		20 Helmet 97		21 Sol. N		22 Alc. Spec. 96	
23 Drug Spec. 96		24 Drug Result 97		25 Drug Category 97		Not Applicable - Alcohol and Drug Results are only reported for Driver/Primary Person for each Unit.	
Owner/Lessee Name & Address BACA, JUAN, 6237 MICHEL ST EL PASO, TX 79932							
Proof of Fin. Resp. Yes		26 Fin. Resp. Type 2		Fin. Resp. Name INS. CO.		Fin. Resp. Num. 45990526	
Fin. Resp. Phone Num. (800) 225-0011		27 Vehicle Damage Rating 1		27 Vehicle Damage Rating 2		Vehicle Inventoried Yes	
Towed By PRIVATE TOW		Towed To PRIVATE TOW					

Law Enforcement and TxDOT Use ONLY.
Form CR-3 (Rev. 1/1/2018)Case
ID 19-08TxDOT
Crash ID

16969645.1

9129293

Page 2 of 2

Disposition of Injured/Killed		Unit Num.	Prsn. Num.	Taken To	Taken By	Date of Death (MM/DD/YYYY)	Time of Death (24-HR:MM)
1	1	University Medical Center of El Paso	Fire Medical Services				
2	1	Sierra Medical Center	Fire Medical Services				

Unit Num.	Prsn. Num.	Charge	Citation/Reference Num.
1	1	E/T CONTROL SPEED C/A	19280863

Damaged Property Other Than Vehicles		Owner's Name	Owner's Address

Unit Num.	10,001+ LBS.	TRANSPORTING HAZARDOUS MATERIAL	9+ CAPACITY	CMV Disabling Damage?	Yes	No	28 Veh. Oper.	29 Carrier ID Type	Carrier ID Num.	30 Veh. Type
31 Bus	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
31 Bus Type	<input type="checkbox"/> RGWW	<input type="checkbox"/> GVWR	<input type="checkbox"/> Yes	<input type="checkbox"/> No	32 HazMat Class Num.	HazMat ID Num.	32 HazMat Class Num.	HazMat ID Num.	33 Cargo Body Type	
Unit Num.	<input type="checkbox"/> RGWW	<input type="checkbox"/> GVWR	34 Trlr Type	CMV Disabling Damage?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Unit Num.	<input type="checkbox"/> RGWW	<input type="checkbox"/> GVWR	34 Trlr Type
Sequence Of Events	35 Seq. 1	35 Seq. 2	35 Seq. 3	35 Seq. 4	Intermodal Shipping Container Permit	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Actual Gross Weight	Total Num. Axles	

36 Contributing Factors (Investigator's Opinion)				37 Vehicle Defects (Investigator's Opinion)				Environmental and Roadway Conditions							
Unit #	Contributing	May Have Contrib.		Contributing	May Have Contrib.			38 Weather Cond.	39 Light Cond.	40 Entering Roads	41 Roadway Type	42 Roadway Alignment	43 Surface Condition	44 Traffic Control	
								1	3	97	2	1	1	96	

Investigator's Narrative Opinion of What Happened (Attach Additional Sheets if Necessary)		Field Diagram - Not to Scale	
<p>600 E Paisano is a seven lane, marked lane, roadway with a center median. 600 E Paisano has three Eastbound lanes and one turn lane to make a Northbound turn onto 300 S Florence. 600 E Paisano has three Westbound lanes. 700 E Paisano is a seven lane, marked lane, roadway with a center median. 700 E Paisano has three Westbound lanes and one turn lane to make a Southbound turn onto 400 S Florence. 700 E Paisano has three Eastbound lanes. 400 S Florence is a two lane, unmarked, roadway with one Northbound and one Southbound lane. Unit 2 was traveling Westbound on 700 E Paisano, in the turn lane, and proceeded to make a Southbound turn to 400 S Florence. Unit 1 was traveling Eastbound in lane three on 600 E Paisano and Driver of Unit 1 failed to control the speed of Unit 1 causing Unit 1 to collide with Unit 2. Driver of Unit 1 was treated at the scene and taken to University Medical Center for further treatment. Driver of Unit 2 was treated at the scene and taken to Sierra Medical Center for further treatment. Driver of Unit 1 stated he was running Code 3 and Driver of Unit 2 stated he did not hear an audible siren or see any overhead lights.</p>			

Time Notified (24-HR:MM)		How Notified	Time Arrived (24-HR:MM)	Report Date (MM/DD/YYYY)
2	1	2	6	03/22/2019

Invest. Comp.	Investigator Name (Printed)	ID Num.	Service/Region/DA
<input checked="" type="checkbox"/> Yes	Gonzalez III, R.	2505	C C

ORI Num.	Agency
T X 0 7 1 0 2 0 0	EL PASO POLICE DEPARTMENT